

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5963 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTIBHAI F. PATEL & ANR.

Versus

STATE OF GUJARAT

Appearance:

MS JOLY DESAI for Petitioners

MR HL JANI for Respondent No. 1

None present for Respondents No.2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/03/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The petitioners, two in number, Livestock Inspectors of the District Panchayat, Kheda at Nadiad, filed this Special Civil Application and challenge has been made thereunder to the order dated 1st August, 1984, of the Additional Development Commissioner, Gujarat State, Gandhinagar in the appeal of the first petitioner and the order of the

even date of the Additional Development Commissioner in the case of other petitioner.

2. The petitioner No.1 joined the Government services as Livestock Inspector with effect from 28th September, 1962, and he was serving on deputation to Kheda District Panchayat with effect from 18th September, 1964. During his service on deputation to Kheda District Panchayat, he was given selection grade with effect from 22nd November, 1972 by an order of the Government dated 10th March, 1975. The petitioner No.2 was appointed as Livestock Inspector with effect from 3rd November, 1959, and he was also sent on deputation to Kheda District Panchayat with effect from 11-5-1979. He was given the selection scale with effect from 22nd November, 1972 like petitioner No.1. It is not in dispute that both the petitioners were given the selection scale on the basis of their seniority in the cadre of Livestock Inspector in the Government. The petitioners were absorbed in the Kheda District Panchayat services with effect from 21st July, 1980. At the time of their absorption, there is no dispute, both the petitioners were getting the selection scale in the pay scale of 475-650 and both of them were getting Rs.590/- as basic pay at the time of their absorption. There are two different time scales for Livestock Inspectors i.e 330-560 and the selection scale 475-650.

3. Under the order dated 21st February, 1983, the District Animal Husbandry Officer of Kheda District Panchayat, Nadiad, directed that the petitioners will be entitled to the pay scale in the time scale of 330-560 and not in the selection grade time scale of 475-650 with effect from 22nd July, 1980. The excess salary and dearness allowance paid to the petitioner was further directed to be recovered. Against the aforesaid order, the petitioners made a representation before the District Development Officer, Kheda District Panchayat, who by his orders dated 2nd October, 1983 and 1st November, 1983 rejected the representations. Then the petitioners have taken up the matter by filing an appeal to the Additional Development Commissioner, Gujarat State, Gandhinagar and both came to be dismissed under the order dated 1st August, 1984. Hence, this Special Civil Application.

4. The counsel for the petitioners has drawn the attention of the Court to the document, annexure 'C' dated 24th July, 1980. This is a letter of the petitioners to the District Cattle Breeding Officer regarding their absorption. The petitioners have mentioned therein that they will accept the order of

absorption in Panchayat services if their pay scale and their previous service are to be taken into consideration from 28th June, 1962. On this application of the petitioners, the District Cattle Breeding Officer, Kheda District Panchayat, Nadiad, has ordered that as per the Government rules their previous services, leave, pay and pension etc. are considered continuous. Only the seniority list would remain behind which, may please be noted. The petitioners were getting selection scale since 1973 and so they have agreed for their absorption in the District Panchayat Services as their pay scale was protected. After their absorption, the District Panchayat sought to reduce their pay scale from 475-650 to 330-560 which would certainly result in monetary loss to them during the service period as well as after retirement. The petitioners were given the selection scale on the basis of their seniority in the Government and in case for the reasons recorded in the orders, their pay scale is reduced then at that point of time they should have been given the opportunity to opt for the Government services, but that has not been done. The counsel for the petitioner stated that during the pendency of this Special Civil Application both the petitioners have been protected by granting interim relief and both have retired from the services and their pension and other retirement benefits have been fixed on the basis of last pay drawn, which they were drawing in the pay scale of 475-650. The order impugned in this Special Civil Application has been stayed by this Court and the same remained stayed for all these years. It is true that the petitioners applied for the Panchayat services which post was in the pay scale of 330-560, but it is equally true that the petitioners were sufficiently senior in the Government services and on the basis of their seniority they have acquired a right of selection scale and which they were getting since 1973. The petitioners were under a bonafide belief that their pay scale shall be protected, which has been done for two years, but latter, on some objection of the Local Fund Audit Office, their pay scale is sought to be reduced and the recovery is sought to be made. At this stage, the petitioners should have been called upon to give their option to return back to Government. In case the District Panchayat does not want to protect their pay scale then they have all the right to go back to Government, parent employer. It is also not the case of the respondents that the Government has terminated the lien of the petitioners at that point of time.

5. Taking into consideration the totality the facts of this case, this writ petition deserves acceptance and

accordingly it is allowed. The order annexure `D' & `E' dated 21-2-1983 passed by District Cattle Breeding Officer, Kheda District Panchayat, Nadiad, and the orders annexure `H' and `I' dated 1-8-1984 passed by Additional Development Commissioner, Gujarat State, Gandhinagar are quashed and set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-